IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS.5071 TO 5080 OF 1999
WITH
FIRST APPEAL NOS.5174 TO 5183 OF 1999
WITH
FIRST APPEAL NOS.5376 TO 5385 OF 1999
WITH
FIRST APPEAL NOS.5410 TO 5419 OF 1999
WITH
FIRST APPEAL NOS.5424 TO 5432 OF 1999
WITH
FIRST APPEAL NOS.5433 TO 5442 OF 1999
WITH
FIRST APPEAL NOS.5443 TO 5452 OF 1999
WITH
FIRST APPEAL NOS.5628 TO 5637 OF 1999
WITH
FIRST APPEAL NOS.4997 TO 5006 OF 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHAYA POLABHAI

Appearance:
MR ND GOHIL, AGP for the appellant
MR KL DAVE for the respondents-original claimants

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 14/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 54 of the Land Acquisition Act read with section 96, CPC, at the instance of the State of Gujarat challenging the judgement and awards passed by the Reference Court under section 18 of the said Act.

2. These appeals can be disposed of by a common judgement inasmuch as they arise from References under section 18 decided by the same Court on the same day (although in different groups of matters). Furthermore, all these appeals raise a common question of law which was also raised before the Reference Court in each of the Land Reference Cases.

3. The question which arises for our consideration in the present group of appeals is as to whether the Reference Applications under section 18 were filed within the period of limitation. This contention as to limitation has been raised by the appellant-State in its written statement before the Reference Court. The Reference Court was conscious of this contention and has therefore raised the relevant issue pertaining to limitation in each of the Land Reference Cases.

4. However, on examining the impugned judgement and awards (as aforesaid passed by the same Court on the same day), we find that the entire treatment given to this issue is both casual and superficial. The Reference Court has dealt with this issue in paragraphs 12 to 14 of the impugned judgement. Suffice it to say, without going into unnecessary criticism of the approach and attitude of the Reference Court, that the Reference Court failed to apply its mind to two factual aspects which arose for its consideration while applying clause (b) of section 18, subsection (2) of the said Act. The Reference Court

was under an obligation in law to consider the case put up by the opponent-State on both the fact situations viz. (i) whether the limitation would be six weeks from receipt of the notice from the Collector under section 12, subsection (2) of the said Act, or (ii) within six months from the date of the Collector's award, in view of the fact that clause (b) specifically contemplates, on a collective consideration of both the fact situations, "whichever period shall first expire". Thus, unless the Reference Court applied its mind to both fact situations, it could not merely accept the averments of the claimants or could not merely accept the evidence brought on record by the claimants and hold that the applications were made within the period of limitation without considering the alternate case where, in case notice under subsection (2) of section 12 was served on the claimants, the reference applications had in fact been filed within six weeks from the date of such service.

5. The Reference Court has clearly failed to appreciate this aspect of the matter.

6. However, on going through the impugned judgement and the evidentiary material on record, we find that this court, while siting in appeal over the impugned judgement and awards, is faced with a serious difficulty in deciding this fact situation on account of the fact that there is no evidence on record to establish the date of service of the notice under section 12(2) of the said Act.

7. In this context we are required to take note of the observations of the Supreme Court in the case of Ram Kali Bhattacharjee Vs. State of West Bangal, reported at 1995 Supp (3) SCC 314. In this context the Supreme Court has observed that where no positive finding could be recorded in this behalf, on the basis of the evidence on record, on account of the fact that there is paucity of evidence and lack of factual foundation, the appropriate course would be to direct the Reference Court to go into that question. On the facts of that case the Supreme Court had thought it appropriate to frame the questions which were required to be gone into by the Reference Court. In such a fact situation the Supreme Court had also set aside the judgement and award of the Reference Court.The Supreme Court thereafter issued directions to the Reference Court to decide the question of limitation in accordance with law after affording an opportunity to the parties to adduce additional evidence and if the Reference Court came to the conclusion that the applications were within limitation, then to proceed to

determine the compensation in accordance with law.

8. Learned counsel for the respondents sought to contend before this Bench that notices under section 12(2) of the said Act were not served at all and therefore the question of date of service thereof on the claimants would not arise and consequently the first part of clause (b) of section 18(2) would have no application to the facts of the case. Firstly, we are not inclined to act upon or accept a bare submission made by learned counsel for the respondent, on a question of fact which is yet to be determined. Secondly, this submission goes contrary to the submissions made by this very counsel before the earlier Bench which was hearing this very group of appeals. The earlier Bench (Coram: M.H. Kadri and D.P. Buch JJ) had passed an interim order dated 13th June 2000 in this very group of matters as under:

> "After the conclusion of the arguments of the learned advocates, as Mr. K.L.Dave found that the court was of the prima facie opinion that the Reference Applications filed by the claimants under section 18 of the Act were time barred, learned advocate for the respondents Mr. K.L. Dave requested the court to adjourn the hearing of the Appeals to 20th June 2000 so as to enable him to find out the correct date of service of the notice under section 12(2) of the Land Acquisition Act, 1894. With reluctance, we have adjourned the Appeals to 20th June 2000 with a clear understanding that learned advocate Mr. K.L. Dave should remain present in the court on the adjourned date. Learned Advocate Mr. K.L. Dave has given assurance that he shall remain present on 20th June 2000 and in case he is not present, the court may proceed to dictate the judgement in the above Appeals. S.O. to 20th June 2000."

9. Learned counsel for the respondents then sought to rely upon a decision of the Supreme Court in the case of The Municipal Corporation of Greater Bombay Vs. Lala Pancham and others, reported at AIR 1965 SC 1008. However, we find that the said decision has no application to the facts of the present case for a number of reasons.

9.1 Firstly, this decision sought to be relied upon by the learned counsel for the respondents is on a specific interpretation of Order 41, Rule 27, which has

no application to the facts of the case.

9.2 Secondly, on a correct interpretation of Order 41, Rule 27, the Supreme Court has observed that this provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce a judgement in a case. As we have observed hereinabove, and as observed in the case of Ram Kali Bhattacharjee (supra), where the paucity of evidence would not permit the appellate court to decide the issue, the only recourse would be to Order 41, Rule 25, and it would not be a case falling under Order 41, Rule 27. In the premises aforesaid, these appeals require to be allowed. The impugned judgement and awards passed by the Reference Court are quashed and set aside. The Reference Court is directed to rehear and redecide the question of limitation, after giving an opportunity to both sides to lead such additional evidence as may be considered necessary by the parties, and then to decide the issue of limitation bearing in mind both fact situations contemplated by clause (b) to section 18(2) of the said Act.

10. In case the Reference Court comes to the conclusion that the Reference Applications were filed within limitation, it may then proceed to decide the Reference Applications on merits and in accordance with law. Since this is an old matter, the Reference Court is directed to dispose of the relevant Reference Applications within six months from the date of receipt of order of this Court.

11. These appeals are accordingly allowed with no order as to costs.

12. The Registry is directed to dispatch to the trial court the R & P as expeditiously as possible and in any case not later than 27th December 2000.

13. Direct service is also permitted.

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